

Notice of Allowability

Application No.

09/774,936

Applicant(s)

OZENBERGER ET AL.

Examiner

Stephen Gucker

Art Unit

1647

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 2/15/05.
2. ☒ The allowed claim(s) is/are 8-9,11-12,14-18,22-23,25-27,31-34,38-49, renumbered as 1-30, respectively.
3. ☒ The drawings filed on 31 January 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 5/5/05
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material

5. ☐ Notice of Informal Patent Application (PTO-152)

6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____

7. ☒ Examiner's Amendment/Comment

8. ☒ Examiner's Statement of Reasons for Allowance

9. ☐ Other _____

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EXAMINER'S AMENDMENT & REASONS FOR ALLOWANCE

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Raymond Van Dyke on 4/28/05.

An examiner's amendment to the record appears below.

In the specification:

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Page 1, first sentence, deleted "pending" and inserted after "14, 1998, now" :

--abandoned--.

Page 9, Table 1, column "Hybrid Length (bp)", row "E", deleted "\$50" and inserted in its place: -->50--.

In the claims:

Canceled claim 13.

In claim 14, line 1, deleted the phrase "according to claim 13 further".

In claim 15, line 1, deleted the phrase "according to claim 13 further".

In claim 17, line 1, deleted "A".

In claim 17, line 1, inserted before "host": -- An isolated--.

In claim 18, line 1, inserted before "host": --isolated--.

In claim 45, line 1, deleted "A".

In claim 45, line 1, inserted before "host": -- An isolated--.

In claim 49, line 1, deleted "A".

In claim 49, line 1, inserted before "host": -- An isolated--.

2. The following is an examiner's statement of reasons for allowance: the closest prior art of record (Bonaldo) discloses a sequence that shares 99.8% sequence identity with the instant SEQ ID NO:1. However, the Bonaldo sequence does not anticipate claims 14 or 15 because the Bonaldo sequence is only 523 nucleotides in length, whereas the instant SEQ ID NO:1 is 810 nucleotides in length, and instant claims 14 and 15 are directed to regions of SEQ ID NO:1 beyond that which is taught in the prior

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art. Furthermore, Applicant's amendment to the instant claims concerning hybridization conditions renders the claims definite according to the fixed hybridization conditions provided in the recited portions of Table 1 of the instant specification, and the Bonaldo reference does not read on the claims where hybridization is recited because the Bonaldo sequence does not meet the claim limitations of being at least 75% of the length of instant SEQ ID NO:1.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technical Center 1600 general number which is (571) 272-1600.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gucker whose telephone number is (571) 272-0883. The examiner can normally be reached on Monday to Friday from 0930 to 1800. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached at (571) 272-0961. The fax phone number for this Group is currently (571)-273-8300.

SG

Stephen Gucker

May 16, 2005

Brenda Brumback
BRENDA BRUMBACK
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